

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re
Dixie Net Communications, Inc.
Petition for Waiver of Deadline
Contained in 47 C.F.R. 54.307(c)
Waiver – Expedited Action Requested

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WC Docket No. 08-71

~~CC Docket No. 96-45~~

**PETITION OF DIXIE NET COMMUNICATIONS, INC
FOR WAIVER OF DEADLINE CONTAINED IN 47.C.F.R. 54.307**

Dixie Net Communications, Inc (“Dixie Net” or “Company”) , pursuant to Section 1.3 of the Commission’s Rules,¹ hereby petitions the Commission for waiver of the March 30, 2010 filing deadline for line count information for high cost universal service support set forth in Section 54.307 of the Commission’s rules.² Good cause exists to grant this waiver request and it would be consistent with prior Commission decisions³ for the Commission to accept Dixie Net’s March 30, 2010 High Cost Loop, Local Switching Support, Long Term Support and Interstate Common Line Support, hereafter referred to as High Cost Model Support (“HCM”) Line Count data submissions as timely.

The grant of the requested waiver will serve the public interest by ensuring that the Commission’s fundamental universal service policies are carried out and not impeded because of an unforeseen delay in email. As discussed in greater detail below, Dixie Net attempted to transmit its HCM Line Count data to USAC by email on March 30, 2010 in accordance with

¹ 47 C.F.R. §1.3.

² *Id.*, at §54.307.

³ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, Order, 25 FCC Rcd 843 (2010); *Universal Service High-Cost Filing Deadlines*, Order, 23 FCC Rcd 15325 (2008).

applicable rules. However, severe spring storms in northern Mississippi caused a commercial power outage that affected one of Dixie Net's buildings that, in turn, contributed to the failure of the email transmission that, on March 30, was unknown to Dixie's management. Only on the next business day (March 31) did management discover the email message had not been sent. At such time, the line count information was immediately retransmitted by email, arriving one day after the deadline. Within the past week Dixie Net learned from USAC that it would not treat the Dixie Net submission as timely-filed, thereby giving rise to the need for this waiver request.

I. Background

Dixie Net is a Competitive Local Exchange Carrier ("CLEC") with Study Area Code 289003. The Company provides service to more than 6000 customers in its small town and rural service areas of Tippah County, Benton County, Lafayette County, Oktibbeha County, Yalobusha County, and Winston County in the state of Mississippi. The Company has been designated an Eligible Telecommunications Carrier ("ETC") in the state of Mississippi for receipt of federal USF by the Mississippi Public Service Commission on October 19, 2001, in Docket No. 2001-UA-198.⁴ Dixie Net is eligible to receive High Cost Model Support and Interstate Access Support ("IAS") as a CLEC.

Dixie Net has, in reliance on its designation as an ETC, committed to significant capital investment to expand the scope and quality of the service throughout its service area and must also compensate AT&T Mississippi for local loops used to serve Dixie Net's end user

⁴ *Application of Dixie Net Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Order Designating Dixie Net Communications, Inc., as an Eligible Telecommunications Carrier, Docket No. 2001-UA-198.*

customers.⁵ In the absence of the grant of this waiver request, Dixie Net will not have the expected financial resources to go forward with all of the commitments it has made; the very purpose of both the FCC's universal service rules and the designation of Dixie Net as an ETC will be frustrated.

II. Facts

In August of this year, Dixie Net contacted the Universal Service Administration Company ("USAC") to determine why its USF distribution was not commensurate with the expected funding. In response, USAC representatives indicated to Dixie Net for the first time that disbursements were not made to Dixie Net because its HCM line count data for the third quarter of 2009 was not received by the filing date.⁶ USAC explained that, as a result of the alleged failure of Dixie Net to meet the filing date, the Company would be ineligible for HCM for the third quarter of 2010 in the absence of a grant of the requested waiver.

Previously, on March 30, 2010, Dixie Net attempted to email to USAC, Dixie Net's High Cost Loop, Local Switching Support, and Long Term Support Line Counts, Interstate Common Line Support Form 525 and Interstate Access Support Line Count Report. (Normally, this information would be emailed earlier in the month, but travel and other business requirements precluded this from occurring until March 30.) At this exact time (March 30), there were severe spring thunderstorms in the Ripley, Mississippi area. The storms caused a number of commercial power outages in the Ripley area, including one at Dixie Net's headquarters building, but not at Dixie Net's nearby operations building, which had access to emergency

⁵ USF support is used, in part, to pay AT&T Mississippi the difference between that company's rates for local loops and the more affordable amounts Dixie Net charges its end user customers.

⁶ Email notification from disbursements@usac.universalservice.org on August 30th and phone conversation with Christina in High Cost Support.

back-up power to keep customer service equipment operating in the absence of commercial power.

The email transmission to USAC was sent from a computer located in the operations building for routing through the headquarters building, to Dixie Net's middle mile connection, to the Internet backbone. However, the electric power outage in the headquarters building prevented the normal transmission of the email message to the Internet backbone and, ultimately, to USAC. Further, the Dixie Net manager was not immediately aware of either the power outage in the headquarters building or the failed transmission of the email message to USAC.

On returning to his computer on March 31, Dixie Net's manager learned of the failed transmission and concluded that it was caused by the electric power outage in the other building. He immediately retransmitted the material to USAC, but, obviously, it arrived on March 31, one day after the deadline. USAC representatives later explained that this failure to meet the filing deadline made Dixie Net ineligible to for a third quarter 2010 HCM distribution.

III. A Waiver of the Filing Deadline is Warranted

Dixie Net understands very well the extreme importance of timely data and certification filings by all ETCs, and regrets the delay in the receipt of its filing by USAC. The Dixie Net manager who transmitted the filing by email believed that information would arrive at USAC no longer than just minutes from its transmission in Ripley. He had no reason to anticipate the power outage in Dixie Net's other building nor did he possess any ability to restore commercial power. In the prior filings made subsequent to the designation of Dixie Net as an ETC, the required information was always sent and received by USAC on a timely basis. As in this instance, most of those prior filings were made by email.

While Dixie Net fully accepts responsibility for the late receipt of the filing transmitted to USAC by email due to the commercial power outage,⁷ Dixie Net respectfully maintains that under these facts and circumstances, the strict application of the rule's deadline would be inequitable, unduly burdensome, and contrary to the public interest. Strict application of the filing requirement rule would mean rural consumers will be delayed in their use of new infrastructure that Dixie Net planned to deploy through the utilization of the anticipated distribution from the USF and Dixie Net will likely have a financial problem paying AT&T Mississippi for leased local loops used in the provision of Dixie Net's services.

The result of leaving Dixie Net ineligible for third quarter 2010 HCM distribution is a harsh penalty to both Dixie Net and its rural customers. USAC's indication that it did not receive the filing until March 31, 2010 was not a matter of negligence, carelessness or forgetfulness on the part of Dixie Net. Rather, it occurred due to an unforeseen commercial power outage in a different building from where the email message was transmitted. Unlike many other similar requests for waiver,⁸ Dixie Net is already using the data submission method with the least expected amount of delay in transmission time. It does not rely on the U.S. Mail.

The Universal Service Support for Dixie Net is approximately \$48,000 per month. As previously indicated, in anticipation of the receipt of these USF revenues, Dixie Net has planned the deployment of additional facilities to enhance the level and quality of universal service provided to its rural customers. Not receiving the High Cost Funds during the third quarter of 2010 will adversely affect Dixie Net's ability to deploy the infrastructure improvements it has

⁷ As noted above, Dixie Net regularly emails its HCM line count information several days before the filing deadline, but circumstances were such that this did not occur during March 2010. Dixie Net does not believe that similar circumstances are likely to reoccur in the future.

⁸ See n.3, *supra*.

planned consistent with the permissible utilization of Federal USF for the provision, maintenance, and upgrading of facilities and services for which the support is intended. To date, the federal USF dollars Dixie Net has received have been used to construct and build out its network as intended under the Communications Act of 1934, as amended, and the USF rules and policies adopted by the Commission. Over the past years, Dixie Net has utilized these funds to expand its facility-based operations from the Ripley Central Office to eight other TIER 3 and 4 central offices in surrounding counties. As a facilities-based CLEC utilizing incumbent LEC UNE-Loop infrastructure, equipment deployment in our tier market space does not present a business case for the advancement of telecommunications without the USF support mechanism. Dixie Net has strived to provide affordable telecommunication services to un-served and underserved areas of North Mississippi since its inception in 1998. A large portion of our customer base is from lower income brackets and, accordingly, depends on our existence to keep in touch with society and to provide means for their children to have access to other telecommunication services required for academic and productive pursuits.

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon showing of good cause. It would be unreasonable and unfair to deprive Dixie Net and its small town and rural customers access to otherwise available USF support that keeps rates for service affordable, due to a missed filing deadline associated with an unforeseen commercial power outage.

The courts have held the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969). The court explained in *WAIT Radio*, the Commission is charged with administration of its responsibilities consistent with the "public

interest.” However, an agency may not simply discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the “public interest” for a broad range of situations, but it must also seek out and address the “public interest” in particular, individualized circumstances. The Commission’s waiver authority effectively provides a “safety value” against overly rigid rules that do not promote the “public interest” in unique situations.

See *WATT Radio*, 418 F.2d at 1157, 1159. This case cries for a “public interest” waiver.

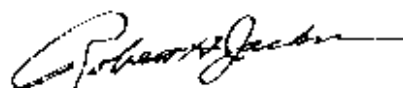
Waiver of the rule under these circumstances will ensure that Dixie Net may maintain its infrastructure deployment plan on a timely basis and meet its obligations to AT&T Mississippi. Moreover, the waiver of the rule under these circumstances should not frustrate the purpose of the strict filing date deadlines to the extent that the purpose of the filing requirement is to ensure that the Commission and USAC are able properly to project, collect, and distribute all universal service mechanisms in a timely and accurate manner.

The Dixie Net filing was transmitted in good faith on March 30, 2010 and retransmitted and received by USAC on March 31, 2010. There was no substantial delay for USAC as the required information was available to USAC for utilization in preparation of its projections. Under these circumstances, a waiver of Section 54.307’s deadline is justified.

IV. Conclusion

For the foregoing reasons, Dixie Net respectfully requests that the Commission grant the requested waiver, such that Dixie Net can receive its third quarter 2010 HCM support and for whatever other relief is deemed appropriate.

Respectfully submitted,
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